In re:)	P.Q. Docket No. 04-0003
O & S Garden Center Corporation, d/b/a Four Seasons Garden Center, and Mr. Oliver Gardner,)	Consent Decision
Respondents)	

This proceeding was instituted under the Plant Quarantine Act of August 20, 1912, as amended (7 U.S.C. sections 151 et seq.), the Federal Plant Pest Act, as amended, (7 U.S.C. sections 150aa-150jj) (Acts) by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service alleging that the respondent violated the Acts and the regulations promulgated thereunder (7 C.F.R. sections 319.37 et seq.). The complainant and the respondent have agreed that this proceeding should be terminated by entry of this Consent Decision, and have agreed to the following stipulations:

- 1. For the purpose of this Consent Decision only, respondent specifically admits that the Secretary of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the complaint, admits to the Findings of Fact set forth below, and waives;
 - (a) Any further procedure;

- (b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof; and
- (c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision.
- 2. The respondent also stipulates and agrees that the United States Department of Agriculture is the "prevailing party" in this proceeding and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504 et seq.) for fees and other expenses incurred by the respondent in connection with this proceeding.

Findings of Fact

- 1. O & S Garden Center Corporation, d/b/a/ Four Seasons Garden Center, respondent herein, is a retail garden supply store incorporated in the state of Vermont, with a mailing address of 323 Industrial Boulevard, Williston, Vermont 05495.
- 2. Oliver Gardner, respondent herein (president of respondent corporation), is an individual whose business mailing address is 323 Industrial Boulevard, Williston, Vermont 05495.
- 3. On or about April 16, 1998, O & S Garden Center
 Corporation and Oliver Gardner (hereinafter referred to
 collectively as "respondents") imported approximately fifty-three

- (53) articles of <u>Malus</u> spp.(apple, crabapple) in violation 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 4. On or about April 16, 1998, respondents imported approximately thirty (30) articles of <u>Prunus</u> spp. (almond, apricot, cherry, laurel, English laurel, nectarine, peach, plum, prune) in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 5. On or about June 10, 1998, respondents imported approximately forty-nine (49) articles of Malus spp. (apple, crabapple) in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 6. On or about June 10, 1998, respondents imported approximately sixty-two (62) articles of <u>Prunus</u> spp. (almond, apricot, cherry, laurel, English laurel, nectarine, peach, plum, prune) in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

- 7. On or about April 9, 1999, respondents imported approximately seventy-four (74) articles of Malus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 8. On or about April 9, 1999, respondents imported approximately forty-four articles of <u>Prunus</u> spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 9. On or about April 9, 1999, respondents imported approximately ten (10) articles of <u>Pyrus</u> spp.(pear) in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 10. On or about May 25, 1999, respondents imported approximately fifty-eight (58) articles of Malus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 11. On or about May 25, 1999, respondents imported approximately fourteen (14) articles of <u>Prunus</u> spp. in violation

of 7 C.F.R. section 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

- 12. On or about May 25, 1999, respondents imported approximately three (3) articles of <u>Pyrus</u> spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 13. On or about March 31, 2000, respondents imported approximately ninty-five (95) articles of Malus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 14. On or about March 31, 2000, respondents imported approximately fifteen (15) articles of <u>Prunus</u> spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- approximately five (5) articles of <u>Pyrus</u> spp. in violation of 7 C.F.R. sections 319,37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

- approximately thirty-five (35) articles of Malus spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 17. On or about May 23, 2000, respondents imported approximately forty (40) articles of <u>Prunus</u> spp. in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.
- 18. On or about May 23, 2000, respondents imported approximately fifteen (15) articles of <u>Pyrus</u> spp., in violation of 7 C.F.R. sections 319.37-2(a) and 319.37-5(b), because import of such articles from Canada into the United States without a phytosanitary certificate of inspection is prohibited.

Conclusions

The respondents have admitted the jurisdictional facts and have agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.

Order

The respondents, O & S Garden Center Corporation and Mr. Oliver Gardner are assessed a civil penalty of nine thousand dollars (\$9,000), of which four thousand dollars (\$4,000) is

suspended, provided that the respondents do not violate the Acts, or the regulations issued thereunder for a period of two (2) years from the effective date of this Order. The respondents shall agree to pay five thousand (\$5,000) dollars of the remaining civil penalty pursuant to a monthly payment schedule, beginning on July 1, 2004. Respondents agree to pay five hundred (\$500) dollars a month, beginning July 1, 2004, for a period of ten (10) consecutive months. Each payment shall be made by certified check or money order and shall include (on the face of the certified check or money order), the docket number of this proceeding, P.Q. Docket No. 04-0003. The certified check or money order shall be payable to "Treasurer of the United States", and shall be forwarded to: United States Department of Agriculture, APHIS, Field Servicing Office, Accounting Section, P.O. Box 3334, Minneapolis, Minnesota 55403.

This Order shall become effective when served on the respondents.

O & S GARDEN CENTER CORPORATION MR. OLIVER GARDWER

Respondents

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TRACEY MANOFF///
Attorney for/Complainant

Issued this 30th day of April, 2004 at Washington, D.C.

Administrative Law Judge